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OFFICE OF PETITIONS

In re Application of :
Carson et al. :
Application Number: 10/632711 : DECISION ON PETITION
Filing Date: 08/01/2003 :
Attorney Docket Number: 023070- :
124010US :

This is a decision on the petition filed on 25 September, 2007, under 37 CFR 1.137(b)¹, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 12 April, 2007, for failure to timely submit an appeal brief in response to the Notice of Appeal filed on 12 February, 2007. The Notice of Appeal was submitted in conjunction with an amendment after final rejection, also filed on 12 February, 2007, with a three (3) month request for extension of time in response to the final Office action mailed on 10 August, 2006, which set a three (3) month shortened statutory period for reply. On 10 September, 2007, an Advisory Action Before the Filing of an Appeal Brief was mailed, stating

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

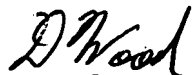
that the reply fails to place the application in condition for allowance.

Petitioners have filed a Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply.² The five-month extension request filed on 25 September, 2007, was submitted more than five (5) months after the end of the period for reply to the Notice of Appeal mailed on 12 February, 2007, and therefore is unnecessary. The extension of time fee paid on 25 September, 2007, will be credited to counsel's deposit account as authorized.

This application is being referred to Technology Center Art Unit 1614 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

² See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).